

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NOEL M. SCHMID,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

Case No. C04-5517 FDB

ORDER ON ATTORNEY FEES

This matter comes before the Court on Plaintiff's motion for authorization of attorney fees under 42 U.S.C. § 406(b). Counsel for Plaintiff seeks a fee award of \$26,180.00. The Commissioner has filed a response to Plaintiff's motion without objection to the fee request.

Attorney's fees may be awarded to a successful social security claimant's lawyer for his or her representation before a court pursuant 42 U.S.C. §§ 406(b); Straw v. Bowen, 866 F.2d 1167 (9th Cir. 1989). Plaintiff must apply to the Social Security Administration for an award of fees for representation at the administrative level. 42 U.S.C. § 406(a); Stenswick v. Bowen, 815 F.2d 519 (9th Cir. 1987).

Under 42 U.S.C. § 406(b)(1)(A) the court can only award fees up to the 25 percent withheld from the past-due benefits. This 25% limit applies to the total of 42 U.S.C. § 406(a) and 406(b) fees combined. See, Morris v. Social Sec. Admin., 689 F.2d 495, 497-98 (4th Cir. 1982); Webb v. Richardson, 472 F.2d 529, 536 (6th Cir. 1972); Dawson v. Finch, 425 F.2d 1192, 1195 (5th Cir.

1 1970).

2 Previously, this Court awarded Plaintiff's counsel \$7,429.28 pursuant to the Equal Access to
3 Justice Act (EAJA). An administrative attorney fee of \$5,300.00 was previously awarded. Plaintiff's
4 counsel now petitions for a gross fee of \$26,180.00.

5 Plaintiff was awarded \$125,920.00 in past due benefits. The federal court retainer agreement
6 provided for a fee of 25% of past due benefits; which equals \$31,480.00. Plaintiff has subtracted
7 from 25% of the past due benefits the amount of fees awarded at the administrative level, leaving a
8 fee of \$26,180.00. As previously noted, counsel has already received \$7,429.28 in fees under EAJA,
9 and any award under § 406(b) must be reduced by that amount. See Gisbrecht v. Barnhart, 535 U.S.
10 789, 796 (2002).


11 The Court concludes that the attorney's fees sought counsel are reasonable within the
12 meaning of § 406(b)

13 ACCORDINGLY,

14 IT IS ORDERED:

15 Plaintiff's Motion for an Award of Attorney's Fees [Dkt #29] is **GRANTED**. Plaintiff's
16 counsel is awarded 42 U.S.C. § 406(b) attorney fees in the sum of \$26,180.00, minus any applicable
17 processing fees as allowed by statute. Upon receipt, Plaintiff's counsel shall immediately reimburse
18 Plaintiff the amount of \$7,429.28 previously received pursuant to EAJA.

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20 DATED this 17th day of March, 2008.

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23 
24 FRANKLIN D. BURGESS
25 UNITED STATES DISTRICT JUDGE
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